

### **REMARKS/ARGUMENTS**

1. **Amendments to the Claims.**

Claims 1-21 and 23-24 remain in this application. Claim 22 has been cancelled.

Claims 1-3, 5-6, 8-9, 12, 19 and 23 have been amended, support for which may be found throughout the specification and drawings. No new matter has been added.

2. **Claim Objections.**

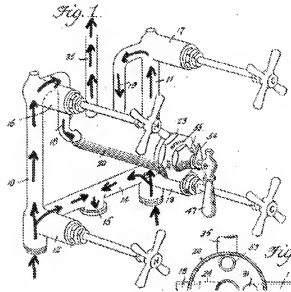
Claims 1, 5, 8, 9 and 12 were objected to due to informalities. Applicant thanks Examiner Bankhead for pointing out the informalities. Applicant has amended the claims to address the informalities and respectfully requests that this objection be withdrawn.

3. **Rejections to the Claims Under 35 U.S.C. §102.**

Claims 1, 5, 12-13, 15, 17 and 22 were rejection under 35 U.S.C. §102 as anticipated by U.S. Patent No. 2,296,128 to Weingarten. As amended claims 1, 5 and 12 call for a plumbing assembly having, among other things, hot and cold water supplies, hot and cold water control valves coupled to respective hot and cold water supplies, a fill member or spout coupled to hot and cold water pipes downstream of the hot and cold water control valves, and an anti-scald valve (or thermostatic tempering valve in the case of claim 1) coupled to hot water supply at a location upstream of the hot water control valves. By way of the anti-scald valve's upstream connection to the primary hot and cold water supply pipes, the anti-scald valve can control the maximum flow of hot water to the hot water valve, and ultimately, the tub filler or spout independent of the hot water control valve.

To the contrary, Weingarten '128 discloses a thermostatically controlled mixing valve that is coupled to primary hot and cold water supply pipes downstream of a pair each of hot and cold water control valves. As illustrated in FIG. 1 of Weingarten '128, which is reproduced below and has been annotated to facilitate this discussion, hot and cold water pipes 10, 11 receive water from hot and cold waters supplies at their lower

ends. See Weingarten '128, Col. 1, line 55-Col. 2, line 2. Hot and cold water pipes 10, 11 are equipped with two pair of water control valves. Lower water control valves 12, 13 control the supply of hot and cold water to transverse mixing pipe 14 and upper water control valves 16, 17 (as well as lower water control valves 12, 13) control the hot and cold water supply to feed pipes 18, 19, which feed into temperature regulating device 20. Fig. 5 of Weingarten '128 also illustrates a mixing valve 66 coupled to water supply pipes 60, 61 downstream of manually actuated valves 62, 63, which control the supply of hot and cold water to the mixing valve 66.



Accordingly, Weingarten '128 fails to disclose an anti-scald valve coupled to the hot water supply pipe at a location upstream of the hot water control valve. Because Weingarten '128 fails to disclose all of the features of claims 1, 5 and 12, these claims and claims 2-4, 6-8, 13-21 and 13-24 depending therefrom, are not anticipated by, and are patentable over, Weingarten '128. Applicant respectfully requests that this rejection be withdrawn.

4. Rejections to the Claims Under 35 U.S.C. §103.

Claims 2-4, 6-11, 14, 16, 18-21, 23 and 24 were rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 2,296,128 to Weingarten in combination with one or more of U.S. Patent Nos. 3,105,519 to Fraser and 917,157 to Sandham.

As discussed above, independent claims 1, 5 and 12, as amended, call for a plumbing assembly having, among other things, hot and cold water supplies, hot and cold water control valves coupled to respective hot and cold water supplies, a fill member or spout coupled to hot and cold water pipes downstream of the hot and cold water control valves, and an anti-scald valve (or thermostatic tempering valve in the case of claim 1) coupled to hot water supply at a location upstream of the hot water control valves. Similarly, claim 9 calls for a method for controlling the temperature of water flowing to a tub by the steps, among other, of connecting a thermostatic mixing valve to hot and cold water supplies, connecting the output of the anti-scald valve to the bathtub filler, and connecting hot water control valves to the hot and cold water supplies at a position downstream of the mixing valve (i.e. the anti-scald valve is upstream of the hot and cold water control valves). By way of the anti-scald valve's upstream connection to the primary hot and cold water supply pipes, the anti-scald valve can control the maximum flow of hot water to the hot water valve and, ultimately, the tub filler or spout independent of the hot control valve. For the reasons discussed above, Weingarten '128 fails to disclose, teach or suggest an anti-scald valve coupled to the hot water supply pipe at a location upstream of the hot water control valve.

Fraser '519 discloses a balanced pressure mixing valve but does not disclose, teach or suggest coupling this valve to the hot water supply pipe at a location upstream of the hot water control valve. For this reason, no combination of Weingarten '128 and Fraser '519 would yield the invention of claims 1, 5, 9 and 12, and claims depending therefrom.

Sandham '157 discloses a spraying attachment for bathtubs. Sandham '157 does not disclose, teach or suggest the use of any type of anti-scald, thermostatic or pressure mixing valve, let alone coupling such a valve upstream of the hot water control valve. Accordingly, no combination of Weingarten '128 and Sandham '157 would yield the invention of claims 1, 5, 9 and 12.

For the reasons discussed above, no combination of the cited prior art discloses, teaches or suggests all of the limitations of independent claims 1, 5, 9 and 12. Accordingly, claims 1, 5, 9 and 12, and claims 2-4, 6-8, 10-11, 13-21 and 23-24 depending therefrom, are patentable over the cited art. Applicant respectfully requests that this rejection be withdrawn.

5. Disclosure of Prosecution in Related Case

In view of Applicant's duty of disclosure, Applicant attaches hereto a copy of the most recent office action issued, and corresponding response files, in related application Serial No. 10/704,086.

**CONCLUSION**

In view of the above-made amendments and remarks, Applicant believes that the claims are now in condition for allowance and respectfully requests action toward a Notice of Allowance. Applicant hereby requests a three month extension of time and submits the applicable fee herewith. Applicant believes that no additional fees are due in connection with this submission, however, if any fees are necessary, please charge Deposit Account No. 50-1438, Sommer Barnard PC.

Respectfully submitted,

/C. John Brannon/

By: \_\_\_\_\_

C. John Brannon, Reg. No. 44,557  
Sommer Barnard PC  
One Indiana Square, Suite 3500  
Indianapolis, IN 46204  
Ph. (317) 713-3500  
Fax: (317) 713-3699  
jbrannon@sommerbarnard.com